

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

ORIGINAL APPLICATION NO.: 846 of 1998

Date of Decision : 30/7/2009

Shri Shaikh Meer Saliyam, Applicant.

Shri S. R. Atre, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for Respondents.

CORAM : Hon'ble Shri Jog Singh, Member (J).

1. To be referred to the reporter or not ?
2. Library.


(JOG SINGH)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 846 of 1998

Dated this Thursday, the 30th day of July, 2009.

CORAM : Hon'ble Shri Jog Singh, Member (J).

Shri Shaikh Meer Saliyam,
R/o. House No. 871, Bismillah
Manzil, Chandarwada,
Fatorda, Margao,
Goa 403 601.

Presently working as -
Dy. Office Superintendent
(Level.II), Customs House,
Mormugao Harbour,
Mormugao 403 803.

... Applicant

(By Advocate Shri S.R. Atre)

VERSUS

1. Union of India through
The Commissioner of Customs
& Central Excise,
Customs House,
Panaji, Goa 403 001.
2. Commissioner of Customs &
Central Excise, Custom
House, Panaji,
Goa.
3. Chief Commissioner of
Customs & Central Excise,
PMC Bldg., Tilak Road,
Pune.
4. Smt. Olympia Vijaychandran,
Preventive Officer,
Preventive Department,
Customs House,
Murmugao Harbour,
Murmugao 403 803.

... Respondents

(By Advocate Shri V.S. Masurkar)



ORDER (ORAL)

Per : Shri Jog Singh, Member (J).

This is the second round of litigation. The applicant has earlier approached this Tribunal by way of O.A. No. 846/1998 against his non promotion to the post of Inspector/Preventive Officer and also for setting aside the promotion of Respondent No. 4 therein, namely, Smt. Olympia Vijaychandran. After considering the contentions of the parties, this Tribunal by its order dated 30.05.2000, rejected the case of the applicant by disposing the said O.A. Aggrieved by the said order, the applicant approached the Hon'ble High Court by way of Writ Petition No. 426 of 2003, which has been decided by the Hon'ble High Court in favour of the applicant by its order dated 07.01.2009. The said Writ Petition has been partly allowed. The finding of the Tribunal on the rejection of the applicant's claim regarding his non selection in the year 1995 was upheld by the Hon'ble High Court. However, keeping in view the totality of the facts and circumstances of the case and after looking into the records and pleadings of the parties, the Hon'ble High Court has specifically directed this Tribunal to hear the matter afresh. Para 5 of the High Court's judgment is relevant and is reproduced below :



"5. We have heard the learned counsel appearing for the parties. We have also gone through the Order of the Administrative Tribunal. It is not in dispute that so far as vacancy of Inspector of Central Excise is concerned, that vacancy could not be filled in the year 1995 because a candidate who was selected had not joined on the said post and the list was not operated further. In that view of the matter and in our view when the Departmental Promotion Committee again met in the year 1996, the claim of the petitioner was required to be considered for the aforesaid post. At that time, the vacancy which was already in existence in 1995 was also required to be taken into account as that vacancy was not filled in by the Department. It is not in dispute that in the year 1995, the petitioner was within age and since the post remained vacant at the time when the Departmental Promotion Committee met in 1996, in all fairness, the claim of the petitioner should have been also considered in the year 1996 as the post of 1995 remained vacant and in the year 1995, the petitioner was within age. The Tribunal has also not considered whether age relaxation powers were available and whether it was a fit case for granting such relaxation. Since the claim of the Petitioner was required to be considered on the basis of available vacant post of 1995 as well as the question of whether any powers of age relaxation are available, we remand the matter to the Tribunal to decide the said aspect afresh as to whether the petitioner was eligible to be promoted to the post of Inspector of Central Excise in the year 1996 on the basis of vacant post of 1995 as well as on the ground as to whether the age relaxation can be given to the petitioner for the vacancy of 1996 of the said post. We make it clear that we do not find any substance in the grievance of the petitioner that in the year 1995, his case was not properly considered for promotion as there is ample material on record to show that the petitioner was far below in the merit list when the Departmental Promotion Committee met in the year 1995. Even learned counsel appearing for the petitioner conceded this aspect and restricted his argument only in connection with the vacancy which remained unfilled in the year 1995 as at that time, the petitioner was within age. The Tribunal shall accordingly decide the matter in the light of the observations made hereinabove and may also decide whether the petitioner's case could have been considered for the vacancy



of 1995 for the post of Inspector of Central Excise as well as on the ground whether age relaxation could be given to the petitioner so far as selection process of 1996 is concerned. The Tribunal may also accordingly decide the Original Application of the petitioner afresh. It is clarified that the Tribunal may decide the said question of keeping in view the claim of the petitioner for the post of Inspector of Central Excise only, as in the year 1995, the petitioner was within age and the vacancy of 1995 still remained unfilled. So far as the order of the Tribunal in rejecting the claim of the petitioner regarding the non selection in the year 1995, we uphold the said decision of the Tribunal as he was not found suitable for the said post in that year. The claim of the petitioner to be considered for the post of Inspector of Central Excise in view of the observations made hereinabove. The Tribunal may take appropriate decision in accordance with law and within a period of four months from the receipt of the writ from this Court."

2. We have considered the whole matter afresh. We have heard the learned counsel for the parties at length and perused the pleadings.

3. It is noted that the rules for the post of Inspector (Central Excise) have been notified under proviso to Article 309 of the Constitution and the same are called as 'Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979'. Rule 7 of the said Rules clearly provides that in appropriate places the Central Government may relax any of the provisions of these rules in respect of class of persons or a particular person or category of post. The question of relaxation, which has become necessary, has been looked into the present O.A. because initially the applicant was considered for the post of Inspector



in the year 1999 along with other eligible candidates.

A perusal of the original D.P.C. proceedings brought to our notice by the respondents shows that the applicant was put in the approved list of Inspectors at Sl. No. 16 whereas the Respondent No. 4 was kept at Sl. No. 5 of the merit list. It is, therefore, apparent that the applicant was not actually promoted despite being on the approved list of selected candidates in the year 1995 because sufficient number of vacancies were not there to adjust a person who was placed at Sl. No. 16 in the said approved list. There is no dispute about the eligibility of the applicant as in the year 1995. However, unfortunately, the applicant became overage for consideration for the post in question in the year 1996.

4. In the circumstances and to meet ends of justice, we direct the respondents to reconsider the ~~promotion~~ case of the applicant for the post of Inspector, Central Excise, by holding a review DPC after fully considering and granting an appropriate age relaxation in the year 1996.

5. In the circumstances, the present O.A. is allowed with the above directions to be complied by the respondents within a period of four months from today. It is made clear that in case the Review D.P.C. finds the applicant fit for promotion to the post of Inspector in the year 1996, the applicant would be

entitled to all consequential benefits, but on notional basis. No order as to costs.

Sudhakar Mishra
(SUDHAKAR MISHRA)
MEMBER (A)

os*

Jog Singh
(JOG SINGH)
MEMBER (J)